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(6) Reappointment of Takeshima as head of FTC gives rise to objections in ruling camp

MAINICHI (Page 3) (Slightly abridged)  
May 19, 2007

Yoshiaki Nakagawa

Objections are erupting in the ruling parties against officials reported by media as already chosen by the government for such posts as chair of the Fair Trade Commission (FTC) and the president of the Narita International Airport Corporation (NAA). The personnel selection for those posts requires Diet approval. Because of the objections, the ruling parties put off holding a meeting of a

project team intended to reach an agreement (on the selections).

The official in the spotlight now is FTC Chairman Kazuhiko Takeshima (64). He assumed his post in July 2002 during the Koizumi administration. At one point recently, it was assumed he would retire from the post in September, after serving a five-year tenure, but the Prime Minister's Official Residence (Kantei) began making arrangements to reappoint him to the same post, presumably because the Antimonopoly Law will be amended next year to hike fines on bid-rigging.

Takeshima, after serving as director-general of the National Tax Administration Agency, joined the Kantei in 1998. Serving as deputy assistant chief cabinet secretary, Takeshima was deeply involved in bring about the passage of the so-called privacy act. Prime Minister Shinzo Abe was then Takeshima's supervisor as deputy chief cabinet secretary. After assuming the post of chair of the FTC, Takeshima

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has energetically disclosed not only bid-rigging cases involving companies but also bureaucracy-initiated ones.

For this performance, Takeshima reportedly has received high marks from Abe, but some observers think that the Ministry of Finance (MOF) found itself in a difficult position to recommend someone to the Kantei as a successor to Takeshima. The post of the FTC chairman has been almost always occupied by former MOF officials, although Takeshima's predecessor was Yasuchika Negoro, who came from the Ministry of Justice. MOF apparently wanted to keep the post indefinitely.

However, the Kantei and MOF have been at odds over the issue of employee placements by government ministries and agencies. Given this, even though the ministry recommended (former Vice Minister) Hosokawa and (current Vice Minister) Fujii, who is soon to retire

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from the post, the Kantei would not accept either. So, "the second best way is to get Takeshima reappointed," a senior MOF official analyzed.

Around then, the Asahi Shimbun reported in its morning edition of May 17 that Takeshima's reappointment had been confirmed. That day, the ruling camp's project team on Diet approval of the personnel selection was planning to meet in the Diet, but they did not meet, though the reason why the meeting was canceled was unknown.

The ruling Liberal Democratic Party (LDP) Secretary-General Hidenao Nakagawa, referring to the reappointment of Takeshima as chair of the FTC, told reporters on May 17: "I think it is a good thing for him to firmly address bid-rigging cases to eliminate them." He expressed an intention to welcome the reappointment, but another senior member of the ruling parties revealed: "Takeshima is very good at cracking down on bid-rigging cases, but if he should go too far, everybody would back away and he would not be able to do anything."

(7) Examining the Abe administration: Collective self-defense (Part 2): Will Japan be allowed to intercept ballistic missiles headed for the United States?

YOMIURI (Page 4) (Abridged slightly)  
May 20, 2007

"On April 25, North Korea unveiled a new mid-range ballistic missile under development during its military parade in Pyongyang."

Based on this information from the United States in late April, the Defense Ministry has stepped up its efforts to collect intelligence.

The new North Korean missile, already referred to as Musudan among US authorities, is believed to have a range of 5,000 kilometers. This means Guam, where there are US bases, is within its range. The Musudan is also believed to be more accurate than the Taepodong-2 (6,000 kilometers). The North Korean missile threat is becoming a real possibility for the people of the United States.

"Japan is in a situation where we cannot shoot down a ballistic missile that may be headed for the United States."

The government's blue-ribbon panel to discuss the legal system for national security held its inaugural meeting on May 18 in which Prime Minister Shinzo Abe urged the members to examine the current situation in which the country is not allowed to use the missile defense system for intercepting a ballistic missile possibly headed for the United States.

At present, the Cabinet Legislation Bureau (CLB) takes this view: "Japan is not allowed to intercept missiles headed for other countries because doing so corresponds to an act of collective self-defense."

But Abe, since his tenure as deputy chief cabinet secretary, has repeatedly indicated: "It's nonsense to shoot down only those missiles targeting Japan and overlook those headed for the United States. The American public would find such a view absolutely absurd."

Abe's concern became reality when US Ambassador to Japan Thomas Schieffer held a press conference last October in which he said:

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"What would happen if a missile were launched by an adversary and a Japanese naval vessel had the ability to knock that missile down? Would it have to wait until it could be finally determined that the missile was headed for Japan? Given the few minutes that are involved in missile defense decisions, it is better for us to answer that question now."

Japan was not armed with the missile defense (MD) system last October. Schieffer added: "The answer will be absolutely critical to the function and future of our alliance." Basically it is about the Japan-US alliance rather than about technology. Politically speaking, saying "no" is not an option.

In justifying an act of shooting down missiles targeting Japan, the government cites police powers for eliminating dangerous objects intruding into Japan's airspace. Responding to a ballistic missile constitutes an invocation of the defense right under international law. But in the case of Japan, SDF activities are based on police powers until a defense mobilization order is issued.

The government has a plan to justify shooting down US-bound missiles with police powers. The reason is because chances are high that missiles headed for Guam and Hawaii would fly over eastern Shikoku and Aomori, respectively. But a senior Defense Ministry official thinks such is improper, noting: "Technically speaking, it's rather difficult to use such logic because the altitudes of ballistic missiles targeting such places are quite different from those headed for Japan."

Intercepting ballistic missiles would become possible in 10 years' time. The governments of Japan and the United States have been jointly developing a highly powerful and accurate next-generation interceptor missile with the aim of producing it in 2015. Once deployed, Aegis vessels in the Sea of Japan would be able to shoot down US-bound missiles.

Intelligence between the two countries must also be integrated in order to allow US early warning satellites and SDF and USFJ radars to detect fired ballistic missiles by using the MD system.

An agreement was reached in the Japan-US Security Consultative Committee meeting (2 plus 2) held in Washington on May 1 to establish an MD joint operational screen.

The Air Self-Defense Force's Base Air Defense Ground Environment (BADGE) system has been steadily providing intelligence to the US military since late April.

Some opposition party lawmakers think providing intelligence to the US corresponds to collective defense. The government's position is

that providing intelligence not specifically instructing the US military to fight back does not pose any problems legally.

A senior SDF official took this view: "There won't be enough time to determine whether a fired missile is headed for Japan or the United States unless the entire system, including the radars, miraculously functions 100%."

The government's view that the SDF is not allowed to intercept US-bound missiles might hinder the defense of Japan.

(8) Commentary: Reality-based discussions needed for SDF activities

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YOMIURI (Page 12) (Full)  
May 18, 2007

Hidemichi Katsumata, senior writer

The government has now set up an advisory panel, which will review the government's conventional way of reading and interpreting the Constitution over the right of collective self-defense, focusing on specific cases. I hope the panel will hold broad discussions envisioning various activities to be conducted by the Self-Defense Forces.

The Council for Rebuilding the Legal Foundation of National Security, which consists of former Foreign Ministry and Defense Ministry officials and experts, cites four cases to be studied. There are problems to be cleared up in each case.

Case Study 1: Is Japan allowed to intercept a ballistic missile aimed at the United States?

The government has been taking the position that Japan's missile defense (MD) system will not be used to defend a third country, according to its statement released by Chief Cabinet Secretary Fukuda. The government has said Japan would not be allowed to intercept a ballistic missile even for the purpose of protecting the United States as an ally. However, the government is also aware that the alliance will collapse if Japan overlooks a missile headed toward the United States, as noted by a senior official of the Defense Ministry.

MD is a system that Japan and the United States are developing together to cope with newly emerging threats, such as North Korea's nuclear arsenal and missile deployment. The key is in the hands of the United States. If not for its intelligence and technologies, Japan cannot shield its people. For instance, the security environment surrounding Japan is undergoing a sea change. MD necessitates collective self-defense, and Japan must be allowed to intercept US-bound missiles passing near Japan.

Another problem is that the act of intercepting missiles is grounded police authority stipulated in the Police Officers Duty Performance Law. Under international law, a country's police authority is within the scope of its territorial soil, waters, and airspace only. International waters and outer space are outside the scope of police authority. It is difficult for the notion of police authority to account for an Aegis ship's interception of a missile flying in outer space at a high altitude.

Why? The threat of a ballistic missile falls under the category of imminent violations. International law allows invoking the right of self-defense in such situations. However, the SDF is to act under the Police Officers Duty Performance Law until an order for defense operations is given in the event of emergencies. Accordingly, the panel would have to review the Self-Defense Forces Law.

Case Study 2: In the event a US naval vessel comes under attack on the high seas when an SDF vessel is acting in concert with that US ship, is the SDF vessel allowed to fight back?

This theme is not only in the case of US naval vessels, as seen from the fact that the Maritime Self-Defense Force currently deploys a

squadron in the Indian Ocean to act in concert with multinational forces engaged in an antiterror campaign.

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Even more realistically, if and when there are illegalities like terrorism on the Straits of Malacca and other sealanes that are vital to Japan, coastal countries would form a coalition of the willing with Japan, the United States, Australia, and other countries. We want the panel to discuss what kind of legal interpretation and scheme will be needed in that case for the SDF to act in concert with the naval forces of foreign countries acting in the same sea area for the same purpose.

One high-ranking official of the government has indicated this view: "If that is when an SDF vessel is running alongside a foreign country's naval vessel, we can't tell at once which is targeted. In that case, it's possible to fight back (under SDF Law Article 95) to protect weaponry (in legitimate self-defense)." However, it is rare for warships to run alongside in their operations since their weapons and radar detection range farther today. We want the panel to hold discussions to meet the realities of places where the SDF is actually working.

Case Study 3: If a foreign country's troops come under attack when they are working with SDF members in United Nations peacekeeping operations, are these SDF members allowed to rush to the scene of the attack and fight back?

When Ground Self-Defense Force members were deployed in Iraq, they worked in an area covered by British and Australian forces. If GSDF troops were attacked, British and Australian troops would go to the rescue of those GSDF members as their duty. However, the GSDF is not allowed to rescue British and Australian troops if they were attacked. That is because SDF personnel engaged in international activities are allowed under the current law to rescue only "those who are under their control."

Rescue activities could develop into the constitutionally prohibited use of armed force (i.e., combat). This is why the SDF is not allowed to do so. However, all countries participating in international cooperation recognize that their activities are United Nations members' responsibilities stipulated in the Charter of the United Nations. Even in the case where their troops have no choice but to use weapons, they recognize that their use of weapons in that case is not an act of exercising the right of self-defense as their sovereign right but is a sanction measure based on a UN resolution. The panel would have to separate this case from the right of collective self-defense in their discussions.

Case Study 4: How far is Japan allowed to back up US and multinational forces?

Then, what if an emergency situation breaks out in the periphery of Japan? In that event, Japan is to support US forces "in the rear" where no combat operations are conducted, as stipulated in the Law Concerning Measures to Ensure Japan's Peace and Security in the Event of Situations in Areas Surrounding Japan or the so-called "regional contingency security law" for short. However, Japan is not allowed to provide weaponry and ammunition.

The government says providing weaponry and ammunition to US and multinational forces is tantamount to an act of exercising the right of collective self-defense since such could be linked to their use of armed force. This logic, however, can pass muster only in Japan. In the eyes of an adversarial country, Japan's act of providing logistical support—such as bases, provisions, and fuel—would appear

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to be Japan's participation in collective self-defense even though such rear-echelon support is not conducted in a combat area.

(9) Interview on collective self-defense (Part 1): Shoichi Nakagawa suggests debating collective self-defense from various angles

The government and the ruling Liberal Democratic Party (LDP) have set in full motion a debate on the question of whether to allow Japan to exercise the right of collective self-defense, now a constitutional taboo. Based on the discussions of a blue-ribbon panel of hand-picked experts on whether to allow the use of that right, Prime Minister Shinzo Abe aims to set the stage for constitutional revision. But opinions are divided over reinterpretation of that right. The Nihon Keizai Shimbun will interview the policy chief of each party, starting with Shoichi Nakagawa, who chairs the LDP's Policy Research Council.

-- What do you think is the meaning of launching the discussion of the right to collective self-defense now?

Nakagawa: "The prime minister's pet argument is to allow the exercise of the right to collective defense. With the collapse of the cold-war system, challenges facing Japan on the security front are changing, such the threats from terrorism, North Korea's nuclear weapons and its missiles. In terms of defending the security of the country and the people, I think it is only natural to put that right on the agenda for discussion. By this fall, when the panel comes up with a conclusion, our party, too, wants to reach our own conclusion."

-- The panel's debate seems to center on four specific cases, such as whether the Self-Defense Forces' (SDF) ships can guard US vessels if they come under attack on the high seas.

Nakagawa: "Our party's special committee will discuss cases other than the four the government's panel plans to examine. Without any prejudice, we will examine what we should do and shouldn't do under the current Constitution in consideration of the present state of security. The time and the situation are changing. How to define terrorism? Is the right of belligerency not allowable if the enemy is asymmetric (or the enemy is not a state)? I think it is difficult to deal with these cases in line with the previous interpretation."

-- There is a view that the Constitution should be amended to allow the exercise of the right to collective self-defense instead of just constitutional reinterpretation.

Nakagawa: "The government should not easily reinterpret the Constitution in terms of the impact on diplomatic ties with other countries, as well as other countries' security. When it comes to what Japan should do for its self-defense and international contributions, in some cases, constitutional amendment is required. According to provisions in the National Referendum Law, constitutional revision will come in three years at the earliest. Until then, it is necessary to distinguish between what we can do within the current framework of the Constitution and what we can't do unless constitutional revision is made."

-- Do you mean that Article 9 must be revised in the future so that Japan can use the right to collective defense?

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Nakagawa: "Aside from debate on whether Japan can recognize the right to collective defense, when I read Article 9 without any prejudice, I feel somewhat strange about it. The provision specifies the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. It leaves me under impression that even a self-defense war is not recognized."

-- The junior coalition partner New Komeito is cautious about the exercise of collective defense.

Nakagawa: "I don't think coalition partners always have to share the same views. We accommodate each party's differences regarding other subjects, as well. Our LDP has just begun discussion. No limitations are placed on debate. Various approaches are welcome."

